

Federal Communications Commission

DA 05-2692

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Amendment of Section 73.202(b),)

Table of Allotments,)

FM Broadcast Stations.)

(Cimarron,¹ Las Vegas and Pecos, New Mexico))

MB Docket No. 04-218

RM-10987

RM-11237

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 12, 2005

Released: October 14, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making* ("Notice")² issued in response to a Petition for Rule Making filed on behalf of Meadows Media LLC ("Petitioner"),³ licensee of Station KLVF(FM) ("KLVF"), Las Vegas, New Mexico. Petitioner seeks to reallocate Channel 264C3 from Las Vegas to Pecos, New Mexico, and also to allot Channel 296A to Las Vegas. Although the change of community request is unrelated to the request to allot Channel 296A to Las Vegas, and could have resulted in two separate Notices of Proposed Rule Making, we included both requests in the same docket. Petitioner filed comments in which it reiterated its intent to effectuate its proposals. Sangre de Cristo Broadcasting Co., Inc. filed comments expressing its intent to apply for Channel 296A if that channel is allotted to Las Vegas. Sierra Grande Broadcasting ("Sierra Grande") filed a counterproposal to allot Channel 296C1 to Cimarron, New Mexico. Sierra Grande's expression of interest in this counterproposal was subsequently withdrawn.⁴ For the reasons stated below, we grant Petitioner's request to reallocate Channel 264C3, Station KLVF, from Las Vegas to Pecos, New Mexico. We also grant the allotment of Channel 296A to Las Vegas, New Mexico.

2. At the request of Petitioner, the *Notice* proposed that Channel 264C3, FM Station KLVF, Las Vegas, New Mexico, be reallocated to Pecos, New Mexico, and that FM Station KLVF license be modified to reflect the change of community. This reallocation of Channel 264C3 to Pecos (2000 U.S. Census population of 1,441 persons) would provide Pecos with its third local aural transmission service. Petitioner made the foregoing reallocation request pursuant to Section 1.420(i) of the Commission's

¹ Cimarron has been added to the caption.

² *Las Vegas and Pecos, New Mexico*, 19 FCC Rcd 10222 (MB 2004).

³ The original rulemaking petition in this proceeding was filed by KFVN/KLVF, Inc., the former licensee of FM Station KLVF. Meadows Media, LLC is the current licensee of Station KLVF and has replaced the former licensee as the Petitioner in this proceeding.

⁴ Sierra Grande also complied with Section 1.420 (j) of the Commission's rules by providing a declaration under penalty of perjury that no party has promised to pay or paid it any consideration in connection with the withdrawal of Sierra Grande's counterproposal.

rules,⁵ which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.⁶ In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM allotment priorities.⁷

3. By changing its community of license from Las Vegas to Pecos, Petitioner's station will provide a net gain in service to 52,059 people. We find that reallocating Channel 264C3, Station KLVF, from Las Vegas to Pecos would result in a preferential arrangement of allotments under the FM allotment priorities because it would provide the third local service and the second competitive FM local service to Pecos and would provide radio service to a significantly larger population compared to that provided by its present operation in Las Vegas. We also observe that the reallocation of Channel 264C3 to Pecos would not deprive Las Vegas (2000 U.S. Census population of 14,565 persons) of its sole local aural transmission outlet because Las Vegas will retain local service from three FM broadcast stations and two AM broadcast stations.⁸ Therefore, in accordance with the provisions of Section 1.420 (i) of the Commission's rules,⁹ we will modify the license of Station KLVF to specify operation on Channel 264C3 at Pecos, New Mexico. In addition, we shall allot Channel 296A to Las Vegas. This new allotment will provide service to 21,858 persons in an area of 2,516 kilometers.

4. Consistent with the technical requirements of the Commission's rules, Channel 264C3 can be allotted to Pecos, New Mexico, utilizing coordinates of 35-40-48 NL and 105-32-26 WL, with a site restriction of 16.9 kilometers (10.5 miles) northeast of Pecos. In addition, Channel 296A can be allotted to Las Vegas, utilizing coordinates of 35-36-33 NL and 105-09-31 WL, with a site restriction of 5.4 kilometers (3.3 miles) east of Las Vegas, New Mexico.

5. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

6. Accordingly, pursuant to the authority contained in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective November 28, 2005, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED for the communities listed below, as follows:

⁵ 47 C.F.R. § 1.420(i).

⁶ *See Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

⁷ *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters. Equal weight is given to priorities (2) and (3).

⁸ In addition, Las Vegas would have three vacant FM channels.

⁹ 47 C.F.R. § 1.420(i).

<u>Community</u>	<u>Channel Number</u>
Las Vegas, New Mexico	224A, 244A, 251C, 283C2, 296A
Pecos, New Mexico	264C3, 268C3, 275C3

7. A filing window for Channel 296A, Las Vegas, New Mexico, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

8. IT IS FURTHER ORDERED, That the Petition for Rule Making filed by Meadows Media, LLC, IS GRANTED.

9. IT IS FURTHER ORDERED, That the Counterproposal submitted by Sierra Grande Broadcasting IS DISMISSED as requested.

10. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Meadows Media, LLC for FM Station KLVF Las Vegas, New Mexico, IS MODIFIED to specify operation on Channel 264C3 at Pecos, New Mexico, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

11. Pursuant to 47 C.F.R. Sections 1.1104(3)(l), Meadows Media, LLC, licensee of FM Station KLVF, is required to submit a rule making fee in addition to the fee required for the application to effectuate the change in community of license for FM Station KLVF at the time its Form 301 application is submitted.

12. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

13. For further information concerning the above, contact R. Barthen Gorman, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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